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Kia Silverbrook
Silverbrook Research Pty Ltd
393 Darling Street
Balmain AU AUSTRALIA

AIRMAIL

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In re Application of:
LAPSTUN *et al.*
Serial No.: 09/575,154
Filed: May 23, 2000
Attorney Docket No.: **NPT001US**

DECISION ON PETITION
TO WITHDRAW HOLDING
OF ABANDONMENT

This is a response to the communication filed on March 08, 2004, that is being treated as a petition to withdraw the holding of abandonment in the above-identified application.

The petition is granted to the extent that the proposed after final amendment has been considered but denied as to withdrawal of the holding of abandonment.

This application became abandoned for failure to timely respond to the final Office action mailed July 03, 2003.

The petitioner asserts that a timely response was sent via facsimile on September 03, 2003. To support this assertion, petitioner has provided a copy of a response including an amendment to the specification and claims, a copy of the facsimile confirmation sheet from petitioner's machine and a Certificate of Facsimile Transmission dated September 03, 2003.

The petition meets the conditions to establish timeliness under 37 CFR § 1.8(b) in that (1) the Office was promptly informed of the previous timely mailing, (2) a copy of the previously mailed correspondence with certificate of mailing thereon has been supplied, and (3) the petition includes a statement which attests on a personal knowledge basis of the previous timely mailing or transmission.

It is hereby accepted that a response to the Office action of July 03, 2003, was timely mailed but lost after being deposited with the USPS. Accordingly, the proposed after final amendment has been forwarded to the examiner for consideration.

Consideration of proposed after final amendments are addressed in 37 CFR § 1.113, 37 CFR §1.116, and MPEP 714.13 reproduced, in part, below:

37 CFR § 1.113 (c) states, in part, the following:

“(c) reply to a final rejection or action must include cancellation of or appeal from the rejection of, each rejected claim. If any claim stands allowed, the reply to a final rejection or action must comply with any requirements or objections as to form.”

37 CFR § 1.116 (b) and (c) state, in part, the following:

“(b) ... amendments may be made canceling claims or complying with any requirement of form expressly set forth in a previous Office action. Amendments presenting rejected claims in better form for consideration on appeal may be admitted. The admission of, or refusal to admit, and amendment after a final rejection, a final action, an action closing prosecution, or any related proceedings will not operate to relieve the application or patent under reexamination from its condition as subject to appeal or to save the application from abandonment...”

“(c) If amendments touching the merits of the application or patent under reexamination are presented after final rejection, or after appeal has been taken, or when such amendment might not otherwise be proper, they may be admitted upon a showing of good and sufficient reasons why they are necessary and were not earlier presented.”

Section 714.13 of the MPEP states, in part, the following:

“An amendment filed at any time after final rejection but before an appeal brief is filed, may be entered upon or after filing of an appeal brief provided the total effect of the amendment is to (A) remove issues for appeal, and/or (B) adopt examiner suggestions.”

* * *

“It should be noted that under 37 CFR 1.181(f), the filing of a 37 CFR 1.181 petition will not stay the period for reply to an examiner’s action which may be running against an application. See MPEP § 1207 for appeal and post-appeal procedure.”

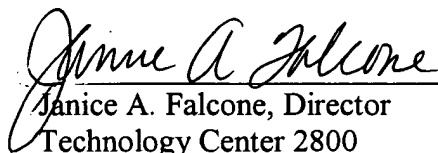
Under current practice, the proposed after final amendment would be entered if it *prima facie* placed the application in condition for allowance. The examiner, after consideration of the proposed after final amendment has determined that the proposed amendment did not *prima facie* place the application in condition for allowance for the reasons set forth in the Advisory Action mailed concurrently herewith.

In view of the above stated reasons, the application remains abandoned and the petition to withdraw the holding of abandonment for the above-identified application is denied.

Any request for reconsideration must be filed within TWO MONTHS of the date of this decision.

Petitioner may wish to consider filing a petition under 37 CFR 1.137(a) or (b) requesting that the application be revived.

Inquiries regarding this decision should be directed to Clayton E. LaBalle at (571) 272-1594.



Janice A. Falcone, Director
Technology Center 2800
Semiconductors, Electrical and Optical
Systems and Components